



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR

Introduction

This hearing dealt with the landlord's application pursuant to section 55 of the *Residential Tenancy Act* (the *Act*) for an Order of Possession for unpaid rent.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another.

The tenant confirmed the landlord's sworn testimony that the landlord handed him the 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) on October 30, 2017. I find that the tenant was duly served with the 10 Day Notice, a copy of which was entered into written evidence by the landlord, in accordance with section 88 of the *Act*.

In accordance with the powers delegated to me under the *Act*, I find that the incorrect effective date identified on that Notice is automatically corrected to November 9, 2017, the first date possible that a Notice handed to the tenant on October 30 could take effect.

The tenant confirmed that the landlord handed him a copy of the dispute resolution hearing package and the landlord's written evidence package about three or four weeks before this hearing. I find that the tenant was duly served with these documents in accordance with sections 88 and 89 of the *Act*.

Issues(s) to be Decided

Is the landlord entitled to an Order of Possession for unpaid rent?

Preliminary Issue – Tenant's Request for an Adjournment

At the commencement of this hearing, the tenant asked for an adjournment of this hearing to enable him to gather his own evidence and better prepare for a hearing of this matter. He explained that he was calling from the local police station as he was attempting to get in contact with a police officer who had visited his property when the landlord tried to evict him without proper authority to do so. The tenant also explained that he needed more time to make arrangements for a witness to testify at the hearing of the landlord's application. He maintained that this witness overheard the landlord agree to accept payment for the first two months of the tenant's occupancy of his rental premises by way of the tenant's provision of two puppies to the landlord. The tenant also testified that he had initiated his own application for dispute resolution with respect to this tenancy, before the landlord served him with the 10 Day Notice. The tenant said that he was unable to follow up on this application because of the landlord's actions to deny the tenant wifi access to his phone.

Although the tenant had no Residential Tenancy Branch file number regarding his own application, nor a scheduled hearing date, I was able to locate a file number for an application the tenant had commenced (see first page of this decision). I advised the parties at the hearing that the tenant's application filed on October 27, 2017, was abandoned by the tenant as he did not complete the steps necessary in order to arrange for a hearing of his application. I also noted that there was no reference to a requested cancellation of the landlord's 10 Day Notice in that application. In this regard, the 10 Day Notice had neither been issued nor served when the tenant filed his application for a range of other concerns that the tenant had with this tenancy.

For his part, the landlord objected to the delay that would be involved in granting the tenant's requested adjournment. The landlord testified that he had not received any payment from the tenant for anything associated with this tenancy which began when the tenant took occupancy of the rental suite below the landlord's residence during the last week of September 2017. The landlord gave undisputed sworn testimony that the tenant had not paid the required security deposit, had borrowed and not repaid \$100.00 from the landlord, and had accumulated a \$200.00+ pay per view television bill, which the landlord would have to pay. The landlord said that he was not seeking any type of monetary award for unpaid rent but wanted the tenant to vacate the premises as soon as possible.

Analysis of Preliminary Issue— Tenant's Request for an Adjournment

Residential Tenancy Branch Rules of Procedure provides guidance on the criteria that must be considered for granting an adjournment. Rule 7.9 explains, "Without restricting the authority of the arbitrator to consider other factors, the arbitrator will consider the following when allowing or disallowing a party's request for an adjournment."

- *the oral or written submissions of the parties;*
- *the likelihood of the adjournment resulting in a resolution;*
- *the degree to which the need for the adjournment arises out of the intentional actions or neglect of the party seeking the adjournment;*
- *whether the adjournment is required to provide a fair opportunity for a party to be heard; and*
- *the possible prejudice to each party.*

After considering the criteria outlined in Rule 7.9, I declined the tenant's request to adjourn this matter. I did so for the following reasons:

The application for dispute resolution referred to by the tenant was initiated prior to his receiving the 10 Day Notice and was abandoned by the tenant without scheduling a hearing.

The subject matter of this hearing was whether or not the tenant paid rent owing to the landlord. It was the tenant's responsibility to contact any witnesses he might have who would have knowledge of any oral agreement he had struck with the landlord to pay his first two month's rent. Although the tenant claimed that he could not have known that the landlord would "lie" about the oral agreement he had made with the landlord and the need for a witness to attend, this is the very issue in dispute. The landlord issued the tenant with the 10 Day Notice in October. He followed this up with an application to end this tenancy for unpaid rent three or four weeks prior to this hearing. For these reasons, I reject the tenant's claim that he

could not have known that he would need to produce a witness to verify the tenant's claim with respect to the nature of the oral agreement he had with the landlord.

Similarly, the tenant's attendance at the police station on the day of the hearing to obtain information to assist him with this hearing could have been undertaken well in advance of this hearing. In this regard, I also see little relevance that any statement from a police officer would have with respect to the landlord's application for an Order of Possession for unpaid rent.

In coming to this determination, I have also found that the landlord would be unfairly prejudiced by allowing his application to be adjourned. The tenant did not apply to cancel the 10 Day Notice he received and there is undisputed testimony that the tenant has failed to make any payments to the landlord since moving into this rental unit in late September 2017.

Background and Evidence

The parties agreed that there is no written Residential Tenancy Agreement for this tenancy. The parties also agreed that the tenant took occupancy of this lower level suite about a week before the scheduled commencement of the tenancy on October 1, 2017. The landlord testified that his oral agreement with the tenant called for the tenant's payment of a security deposit of \$475.00 and monthly rent payments of \$950.00, payable in advance on the last day of each month. The landlord testified that he has not received any payments from the tenant.

The tenant testified that the oral agreement with the landlord was that the landlord would accept one of the puppies he had bred for each of the first two months of his tenancy. After he provided the landlord with these two puppies, the monthly rent would then be \$950.00, the amount stated by the landlord. The tenant testified that he has been unable to work, as he has been tending to the puppies but was starting a new job on the week after the hearing, and would be able to vacate the rental unit by the end of January 2018.

The landlord's 10 Day Notice incorrectly identified \$1,425.00 in rent owing as of October 1, 2017. At the hearing, the landlord confirmed that this figure included the unpaid security deposit. He agreed that the correct amount of unpaid rent that should have been identified on the 10 Day Notice was \$950.00. He said that he held off issuing the 10 Day Notice until October 30, but by then it had become apparent to him that he would not even receive a security deposit from the tenant, let alone monthly rent payments. The landlord said that he is not pursuing the unpaid rent; he only wants vacant possession of the tenant's rental suite as soon as possible.

The tenant confirmed that he neither paid the \$950.00 identified as owing in the 10 Day Notice, nor did he apply to cancel that Notice. He believed that the issues he identified in the October 27 application for dispute resolution were sufficient to address the landlord's 10 Day Notice.

Analysis

I should first note that disputes as to the terms of a Residential Tenancy Agreement can be avoided by the landlord's creation of a written Agreement outlining the agreed terms. Although the *Act* requires landlords to create written tenancy agreements, the *Act* also gives legal effect to oral agreements.

While I have given the tenant's account of the unusual terms of the oral agreement with the landlord careful consideration, I find that it was the tenant's responsibility to apply to cancel the 10 Day Notice if he believed that he had complied with the terms of the oral tenancy agreement he had made with the landlord. He did not make an application pursuant to section 46(4) of the *Act* within five days of receiving the 10 Day Notice to cancel that Notice. In accordance with section 46(5) of the *Act*, the tenant's failure to either pay the amount then owing in full within five days or to apply to cancel the 10 Day Notice within five days led to the end of his tenancy on the corrected effective date of the notice. In this case, this required the tenant to vacate the premises by November 9, 2017, as long as the landlord issued the 10 Day Notice on the proper Residential Tenancy Branch form, which complied with the requirements of section 52 of the *Act*.

After reviewing the 10 Day Notice, I am satisfied that the landlord has complied with the requirements of section 52 as to the form and content of that Notice. As the tenant has not vacated the rental unit by the corrected effective date identified on the 10 Day Notice, I find that the landlord is entitled to a 2 day Order of Possession. The landlord will be given a formal Order of Possession which must be served on the tenant. If the tenant does not vacate the rental unit within the 2 days required, the landlord may enforce this Order in the Supreme Court of British Columbia.

Conclusion

I grant an Order of Possession to the landlord effective **two days after service of this Order** on the tenant. Should the tenant fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: December 15, 2017

Residential Tenancy Branch